

## **FTAA – Free Trade Area of the Americas**

### **Draft Agreement**

#### **Chapter XXI Institutional Framework**

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### **Article 1. Council**

1.1. A Council, which shall be composed of the Ministers responsible for trade of each Party, or their representatives, is hereby established.

1.2. The Council shall have the following duties:

- a) periodically evaluate the implementation and the outcomes of the Agreement;
- b) hear any other matter that could adversely affect the functioning of this Agreement; and
- [c) modify, in pursuance [of the objectives] of this Agreement:]<sup>2</sup>
  - [i. the time periods established in the Tariff Elimination Program, in order to accelerate the process of tariff elimination;]
  - [ii. the rules of origin established in XX (Specific rules of origin);]
  - [iii. Annexes XX to Chapter XX (Investment);]
  - [iv. Annexes XX to Chapter XX (Services); and]
  - [v. the list of entities of a Party set out in Annex XX (Entities), with the goal of incorporating one or more entities into the scope of application of Chapter XX (Government Procurement).]

1.3. The Council shall have one Chair and two Vice Chairs, elected by its members [to serve a term of [...] years.] The positions will be held from the end of each ordinary meeting of the Council until the end of the following meeting.

1.4. The Council shall meet in ordinary session at least once every [...] years and in extraordinary session as necessary. As a general rule, the meetings will take place in the country holding the chairmanship.

### **Article 2. Executive Committee**

2.1. An Executive Committee, which shall be composed of the Vice Ministers or officials of an equivalent rank responsible for trade of each Party, or their representatives, is hereby established.

2.2. The Executive Committee shall have the following duties:

- a) perform the duties of the Council during the intervals between their meetings;

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<sup>1</sup> The provisions of this Chapter may be complemented by special rules of procedure.

<sup>2</sup> [Depending on developments in the negotiations on the respective chapters, the delegations could decide to include other necessary elements that should be modified in compliance with the development of the free trade zone, such as, where appropriate, the uniform regulations of the Chapter on Rules of Origin.]

- b) ensure the fulfillment and enforcement of the provisions of this Agreement;
- c) adopt decisions in accordance with the obligations of this Agreement;
- d) establish technical committees of an *ad hoc* nature, subcommittees, working groups, or similar entities, approve their rules of procedure, and supervise their work;
- e) act as a forum for negotiation on the issues covered by this Agreement and on any other issues that may arise;
- f) establish the rules and procedures for the functioning of the Secretariat, including, among others, the appointment, powers, duties, conditions of service, and duration of the mandate of its Director;
- g) decide on financial and managerial matters relating to this Agreement;
- h) review the financial reports prepared by the Director of the Secretariat and the report of the External Auditor;
- i) present, at each meeting of the Council, a written report on the administration of the budget that includes proposed expenditures and available resources, and that minimally covers the period leading up to the following meeting;
- j) establish the remuneration that the members of each neutral group, as well as their assistants and experts, should receive and the expenses that should be covered for them; and
- k) hear any other matter referred to it by the Council that could adversely affect the functioning of this Agreement.

2.3. The Executive Committee shall have one (1) Chair and [one (1)] [...] Vice Chair[s], elected by the Parties [to serve a term of [...] year(s).] The positions shall be held until the following ordinary meeting of the Executive Committee.

2.4. The Executive Committee shall meet as often as required and no less than [...] times a year. The meetings of the Committee shall normally be held at the headquarters of the FTAA Secretariat.

### **Article 3. [Committees]**

[3.1. The Committees shall be made up of representatives of all of the Parties to the Agreement. They shall be made up of experts who meet at the request of the Executive Committee, to advise Vice Ministers and Ministers on the implementation of the Chapters of this Agreement within their purview.]

[3.2. The Committees shall have the following functions:]

- [a) submit their respective rules of procedure to the Executive Committee for its approval;]
- [b) ensure the proper operation of the Chapters of this Agreement within their purview;]

- [c) consider any matter referred to them by a Party that believes that an actual [or proposed] measure by another Party affects the effective implementation of any commitments set forth in the Chapters of this Agreement that are within their purview;]
- [d) request technical reports from the competent authorities and take the necessary actions for settling the matter;]
- [e) evaluate and recommend to the Executive Committee proposals for modifying, amending, or adding to the provisions of the Chapters of this Agreement that fall within their purview; and]
- [f) carry out such other tasks as referred by the Executive Committee, pursuant to the provisions of this Agreement.]

[3.3. The Committees shall meet as often as needed in order to fulfill their responsibilities at the request of [any of the Parties or] the Executive Committee.]

#### **Article 4. [Civil Society Consultative Committee]**

##### *[Objectives and principles]*

4.1. The Committee shall be of a consultative nature.

4.2. The objectives of the Committee shall be the following:

- a) develop information systems for civil society on:
  - i) issues being discussed or negotiated in the FTAA;
  - ii) administration of the FTAA Agreement;
  - iii) evaluation of the FTAA's impact; and
  - iv) other issues of interest to civil society.
- b) facilitate the formulation of positions, suggestions, contributions, and recommendations by civil society for the consideration of governments.

##### *Composition and registry*

4.3. The Committee shall be made up of four (4) persons per country, as a maximum: two (2) from the business sector (including one representing small and medium enterprises); one (1) from the union sector; and one (1) from the "third sector" (NGOs), social organizations and/or academia. Groups of countries may be represented as a bloc and proxy participation shall be accepted.

4.4. A registry of participating organizations shall be established. This registry shall be compiled through the countries' contact points.

*Chair and Vice Chair*

4.5. Council shall have one (1) Chair and one (1) Vice Chair, elected by its members. If no consensus is reached among the members, governments shall designate the Chair and Vice Chair.

4.6. The term for these posts shall be [...] years.<sup>3</sup>

*Coordination with FTAA entities*

4.7. The Committee shall be directly linked to the entities under the FTAA structure through the recommendations it shall forward to the Council or the Executive Committee regarding issues within its sphere of competence. The Council may also establish relations with the Committees, with regard to technical aspects of the Agreement, and with the Secretariat as regards logistical and administrative aspects. A unit that is specifically responsible for relations with the Committee shall be established within the Administrative Secretariat.

4.8. Accreditation to participate in meetings shall be performed through the Secretariat.

4.9. Internal communications shall be carried out through an interactive webpage that shall be set up for use by the Committee and national contact points. External communications shall be carried out through the FTAA's public website and other means deemed appropriate.

*Internal Regulations*

4.10. Once created, the Committee shall establish its own Internal Regulations with rules for its operations.

4.11. Until the Internal Regulation is approved, the Committee may convene ordinary meetings every six (6) months\* and/or extraordinary meetings, in parallel with meetings of Vice Ministers and/or thematic meetings, either at the headquarters of the FTAA Permanent Secretariat or in one of the States Party to the Agreement.]

**Article 5. [Committee on the Differences in Levels of Development and Sizes of the Economies including the Hemispheric Cooperation Program]**

**Article 6. [Committee on Administration and Budget]**

[6.1. An Administration and Budget Committee is hereby established.]

**Article 7. [Common Provisions for the Executive Committee and the Committees of the FTAA]**

[7.1. Unless otherwise provided for, the decisions of the Council, the Executive Committee, or any other entity, committee, sub-committee, or working group established in, or created pursuant to, this Agreement, shall be adopted by consensus of the Parties present.]

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<sup>3</sup> [Ensure that this term is consistent with that of other FTAA entities.]

\* English and French version "every six months", Spanish and Portuguese version "each semester".

[7.2. A Party may be represented by another Party it designates. Parties who are members of a sub-regional integration group may designate a representative to represent them as a unit.]

[7.3. Where decisions are to be made other than by consensus, each Party shall have one (1) vote which may be exercised on its behalf by a Representative designated under Article 7.2.]

[7.4. The Chairs or Vice Chairs of the entities established under, or pursuant to, this Agreement shall be selected taking into account the need to maintain a geographic balance among the Parties.]

**Article 8. [Meetings of exclusive interest to two or more Parties]**

[8.1. Notwithstanding the provisions of Articles 1. (Council), 2. (Executive Committee), and 3. (Committees), the Council, the Executive Committee, and the Committees may respectively convene and adopt decisions whenever representatives of two or more Parties are in attendance to deal with matters that are of exclusive interest to those Parties, such as the acceleration of the tariff elimination process and the settlement of disputes.]

[8.2. Decisions adopted by the Council, the Executive Committee, and the Committees pursuant to the provisions of Article 8.1. shall not take effect with respect to a Party that did not attend the corresponding meeting.]

**Article 9. Secretariat**

9.1. The FTAA Secretariat is hereby established as the logistical and operational support body responsible for providing administrative [and technical] services to the entities established under this Agreement [and to the Parties thereof].

9.2. The Secretariat shall have its permanent headquarters in the city of [...], in which meetings of the Executive Committee and the Technical Committees shall normally be held.

9.3. The Secretariat shall be responsible for *inter alia*:

- a) maintaining and updating official documentation on the FTAA process, including maintaining the official website;
- b) preparing financial reports, as well as any other documentation related to the budget allocated for administering this Agreement, for the consideration of the Executive Committee;
- c) notifying communications between the Parties;
- d) providing document translation and simultaneous interpretation services during meetings of the Executive Committee and the Technical Committees;
- e) publishing and distributing documents;
- f) providing support to the dispute settlement mechanisms established under this Agreement. This includes the remuneration of the members of the neutral panel, their assistants and experts, as well as their transportation and accommodations expenses;

- g) providing any other necessary logistical and administrative support for entity meetings as established in this Agreement; and
- h) any other matter that is referred to it by the Council or by the Executive Committee.

9.4. The Director shall appoint Secretariat staff and define their duties and conditions of service in accordance with the rules and procedures adopted by the Executive Committee.

9.5. In the discharge of their duties, the Executive Director and Secretariat staff shall neither request nor accept instructions from any government or any authority other than the Council and the Executive Committee and shall refrain from carrying out any activity that may be incompatible with their duties.<sup>4</sup>

**Article 10. [Provision of technical support to FTAA Entities]**

**Article 11. [Technical assistance to help countries implement the FTAA Agreement/ Hemispheric Cooperation Program]**

[11.1. Technical assistance for training government officials involved in the implementation process.]

[11.2. Institutional assistance for setting up and maintaining the offices and equipment needed to fulfill the obligations assumed under this Agreement.]

**Article 12. [Financing]**

12.1. The FTAA Secretariat shall have a budget to meet its operating expenses [and provide support to the dispute settlement mechanism.]

12.2. The budget shall be financed by the contributions of the thirty-four (34) countries of the Hemisphere, [in equal parts] [proportional to each country's share in regional gross domestic product] [proportional to each country's share in intra-hemispheric trade] [proportional to each country's share in global trade] and with other financing sources, if available.<sup>5</sup>

**Article 13. [Dispute Settlement Body]**

[13.1. The Dispute Settlement Body shall be made up of all the Parties to this Agreement (the same Parties that sit on the Executive Committee). It shall be responsible for overseeing the full implementation of this Agreement's dispute settlement mechanism, which is made up of two bodies.]

- a) [Neutral Group or Panel (First Instance).]
- b) [Appellate Body (Second Instance).<sup>6</sup>]

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<sup>4</sup> A Code of Conduct for FTAA personnel shall be required.

<sup>5</sup> Any combination of the aforementioned options could be utilized.

<sup>6</sup> [The TCI shall elaborate this text based on the contributions received from the NGDS.]